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1 saying, you know, I'm not sure if it's a  
2 strain or --

3 A. Yeah.

4 Q. Okay.

5 A. Just what he treated me for was  
6 a muscle pull to start with.

7 Q. Okay. But you weren't yelling  
8 at --

9 A. No.

10 Q. Or I'm sorry. Not yelling. You  
11 weren't talking to anybody about, "I need  
12 surgery" until Dr. Howorth told you that  
13 you needed it?

14 A. No. The second week I went to  
15 Dr. Shirah, I told Dr. Shirah, I said,  
16 "Something is not right." He said,  
17 "Well, you're probably right. We're  
18 going to have to do an MRI. That will be  
19 the best thing we can do before we'll  
20 ever know what's wrong with it."

21 Q. Okay.

22 A. So, we set me up with Oxford,  
23 and I went the next following week.

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1 Q. That was on the 18th or the 19th  
2 of October?

3 A. 19th of October.

4 Q. All right.

5 A. And I took it back to him.

6 Q. All right. And that was on the  
7 22nd of October?

8 A. And he said there ain't nothing  
9 else I can do for you.

10 Q. And then he said you've got to  
11 go to an orthopedist?

12 A. Orthopedic surgeon.

13 Q. Somebody called you and told you  
14 to go to Dr. Howorth? They originally  
15 wanted you to go to Gadsden?

16 A. Yeah. He called Victoria  
17 himself, and she finally set me up in  
18 Alex City.

19 Q. Okay. And that was because it  
20 was closer for you to drive?

21 A. Yeah.

22 Q. How far is it from here to  
23 Gadsden, about 70 miles?

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1 A. A pretty good little ways.

2 MR. BROWN: It's not 70 miles,  
3 is it?

4 MR. TINNEY: About 80.

5 THE WITNESS: It wasn't but  
6 about 45 to Alex City.

7 Q. (By Mr. Brown) Okay.

8 A. 45, 46.

9 Q. All right. Were you happy with  
10 Dr. Howorth?

11 A. He was a good doctor, you know.  
12 He just wanted me in there earlier than  
13 what they let me get in.

14 Q. Okay. Have you told me about  
15 every conversation that you had with  
16 Ms. Heppes?

17 A. I don't know exactly how many I  
18 had. Several.

19 Q. Okay. But what your  
20 recollection is is just the gist of what  
21 y'all were talking about; right?

22 A. Yeah.

23 Q. If you look back at it, can you

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1 close your eyes and specifically recall  
2 one particular conversation over all the  
3 others?

4 A. Uh-huh (affirmative).

5 Q. Okay.

6 A. It's when I got back from Alex  
7 City, and she had denied me from having  
8 surgery on that Monday. I went to the  
9 store and went in there and called and  
10 called her from the store and told her  
11 she was killing me.

12 Q. Okay.

13 A. She said, "We're not planning on  
14 killing you." I said, "But he wants me  
15 to have surgery, and you won't let me  
16 have it."

17 Q. And that was within a couple of  
18 days after you first saw Dr. Howorth;  
19 right?

20 A. That was when I got back from  
21 Alex City.

22 Q. The same day?

23 A. She cancelled it before I could

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1 even get back home.

2 Q. But the same -- but it was the  
3 same day?

4 A. Uh-huh (affirmative).

5 Q. Okay. That was yes?

6 A. Yeah.

7 Q. Okay. When you left  
8 Dr. Howorth's office, did you have an  
9 appointment card to be at Russell  
10 Hospital or anything like that?

11 A. They told me to go to the  
12 hospital on that Friday and get  
13 preadmitted and be ready to have surgery  
14 on Monday. When I left there, that's all  
15 I knowed. By the time I got home, my  
16 mother-in-law called and said Victoria  
17 had done cancelled it before I could even  
18 get home. So, I called him back. He  
19 said he don't know why she cancelled it.  
20 He said, "But you need the surgery."

21 Q. And you called him on the same  
22 day?

23 A. Yeah.

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1 Q. Did you talk to him or Amy?

2 A. I talked to Amy. And she said  
3 that she had cancelled it. She needed  
4 more paperwork and wanted more doctors to  
5 look at the MRI before they do anything.

6 Q. Okay. And it's your testimony  
7 that that was on the 27th; right?

8 A. It was the first time I seen  
9 him, yeah. He wanted me on that Monday  
10 to have surgery. They put it off another  
11 28 days is what they did.

12 Q. Do you know if you ever talked  
13 to anybody named Annie Martin?

14 A. I don't remember no Annie  
15 Martin.

16 Q. Do you know if you ever talked  
17 to anybody named Becky Quisenberry?

18 A. I don't know no Becky  
19 Quisenberry either.

20 Q. Do you know if you ever talked  
21 to anybody named Ms. Abbott?

22 A. Not as I know of.  
23 Ms. Victoria -- I didn't even know her

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1 last name -- is the only one I ever  
2 talked to on workman's comp.

3 Q. Okay.

4 A. She's the only one I talked to.

5 Q. And she just told you that she  
6 wanted two other doctors to look at it?

7 A. Uh-huh (affirmative).

8 Q. She didn't tell you that she  
9 wanted you to be seen by --

10 A. No.

11 Q. -- just she said she wanted two  
12 other doctors?

13 A. She just said she needed all the  
14 paperwork they got and she needed the  
15 MRI's, that she had two more company  
16 doctors that she wanted to look at it.  
17 That's when I asked her why. I said,  
18 "You've already got two."

19 MR. TINNEY: You already  
20 answered the question several times.

21 THE WITNESS: Yeah. I just  
22 couldn't figure it out.

23 Q. (By Mr. Brown) Did you take any



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1 notes of any of these conversations?

2 A. No.

3 Q. You didn't record any of them,  
4 did you?

5 A. No.

6 Q. Do you remember the  
7 interrogatories, the questions that I  
8 sent that you had to get answered and you  
9 signed the responses to? Do you remember  
10 those?

11 A. Huh-uh (negative).

12 Q. Okay. I just want to ask you  
13 about a couple of them. Before I do  
14 that --

15 A. Oh, yeah. I remember you sent  
16 some papers up here, and I signed them.

17 Q. Okay. But you signed that,  
18 though; right?

19 A. Yeah. I remember signing it,  
20 yeah. I understand what you're talking  
21 about now.

22 Q. Okay.

23 A. Yeah.



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1 MR. BROWN: And, John, this is  
2 one of the ones that we talked about  
3 earlier. I just want to make sure I  
4 understand.

5 Q. In Interrogatory No. 34, it says  
6 "Indicate whether the Plaintiff claims  
7 that any injury or permanent damage to  
8 his shoulder is the result of the  
9 negligence of any physician or hospital."  
10 And you said, "To the best of the  
11 Plaintiff's knowledge and belief, yes."  
12 Could you tell me is there anything that  
13 any of the doctors or any of the  
14 hospitals did that you think they did  
15 wrong with your shoulder?

16 A. The only thing they done wrong  
17 is they just waited too long to get it  
18 fixed.

19 Q. Okay.

20 A. So it really wasn't the doctor.

21 Q. All right. I just wanted to --  
22 I thought that's what we had talked  
23 about.

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1                   So, if you said "yes" --

2           A.     I might not have understood what  
3     it was.

4           Q.     Okay. So, you've explained your  
5     answer better today than you did when you  
6     answered it?

7           A.     Yeah.

8           Q.     That's fine.

9                   Now, in Interrogatory No. 30, it  
10    makes reference to part of your  
11    complaint. And in your complaint --  
12    well, I asked you on the suppression  
13    claim to "describe what action you took  
14    to obtain your medical records from  
15    Dr. Howorth or Dr. Shirah during the time  
16    that you claimed that CMI were the only  
17    ones getting medical records." And you  
18    said that you requested that the records  
19    be faxed to his daughter-in-law?

20          A.     Uh-huh (affirmative).

21          Q.     So, did you ask -- during some  
22    of these conversations, did you ask Amy  
23    or somebody at Dr. Howorth's to fax you

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1 the records?

2 A. Yeah, I got them faxed to --  
3 see, my daughter-in-law worked for Sandy  
4 Holliday at that time.

5 Q. What is Sandy Holliday?

6 MR. TINNEY: He's a local  
7 lawyer.

8 THE WITNESS: A local lawyer.

9 Q. (By Mr. Brown) Okay.

10 A. She worked at his office. So,  
11 she -- that's the only place I could get  
12 them faxed to.

13 Q. Okay.

14 A. Because when I was trying to get  
15 my disability, I had to have all my  
16 records faxed to me.

17 Q. Okay. And they never faxed you  
18 the records; is that right?

19 A. I got them all except for  
20 Dr. Rhodes, I think.

21 Q. Were they faxed to you.

22 A. (Witness nods head  
23 affirmatively.)

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1 Q. Is that yes?

2 A. Yeah.

3 Q. Okay. Before you filed this  
4 lawsuit or after you filed this lawsuit?

5 A. After.

6 Q. Okay. So, it was after you had  
7 already hired Mr. Tinney, but before you  
8 had done the disability stuff; right?

9 A. Yeah.

10 Q. Okay. Did you have to pay for  
11 the records? They gave them to you --

12 A. Right.

13 Q. -- free; right? I'm sorry.  
14 That was a bad question. I asked you two  
15 questions at once. They sent you the  
16 records?

17 A. Yeah.

18 Q. Did you have to pay for them?

19 A. Huh-uh (negative).

20 Q. No?

21 A. I told them no. I didn't have  
22 to pay for it. I just told them I was  
23 trying to get my disability, I needed my

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1 records.

2 Q. All right. If CMI has paid for  
3 all your medical bills and they've paid  
4 you the temporary total payments, you  
5 don't contend that they owe you any  
6 additional benefits right now, do you?

7 A. All the pain and suffering I  
8 went through.

9 Q. Okay. Just things related to  
10 this lawsuit; is that right?

11 A. Yeah.

12 Q. Okay.

13 MR. TINNEY: And just for the  
14 record so that, you know, we're operating  
15 under any, you know, misassumption, if he  
16 gets a disability rating, they may owe  
17 him more comp.

18 MR. BROWN: If it's -- yeah.

19 MR. TINNEY: Yeah. Plus  
20 anything -- you know, any medical  
21 associated with it. I mean, they own any  
22 benefits they owe under the --

23 MR. BROWN: But as of right now,

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1 you don't know of any person whose given  
2 him any permanent partial disability upon  
3 which an award could be based.

4 MR. TINNEY: No.

5 MR. BROWN: All right. We may  
6 want to talk about that after we get  
7 through.

8 MR. TINNEY: Yeah. I have not  
9 pursued it, but I'm sure there's  
10 something there.

11 MR. BROWN: Okay.

12 Q. And since you filed this  
13 lawsuit, you have not talked to  
14 Ms. Heppes anymore; is that right?

15 A. Huh-uh (negative).

16 Q. Was that no?

17 A. No.

18 Q. You haven't asked for another  
19 doctor?

20 A. No.

21 Q. And you haven't asked for  
22 authority or the ability to go back to  
23 Dr. Howorth or anybody else?

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1 A. No.

2 Q. Now, have you been to any  
3 other -- other than the psychiatrist that  
4 you went to see for your disability, have  
5 you been to any other psychiatrist or  
6 psychologist for anything related to your  
7 shoulder?

8 A. Huh-uh, no.

9 Q. Have you been to any kind of  
10 counseling?

11 A. No.

12 Q. Have you been to any kind of  
13 pain management?

14 A. No.

15 Q. How has this shoulder surgery  
16 affected you?

17 A. It affects me a lot.

18 Q. Okay. Well, tell me as best you  
19 can how.

20 A. I barely can use it a lot of  
21 days. I can't raise it up.

22 Q. Okay. How else?

23 A. I just can't raise it up. I can



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1 use it like right here, you know. But I  
2 can't just -- I can't do none of this.  
3 It won't go up. I have to push it up  
4 with my other arm. It's just like it  
5 catches. It don't want to go.

6 Q. And I think I asked you this  
7 before. I probably did. But if you had  
8 not had the leg surgery, you would still  
9 be working, right, if your legs weren't  
10 bothering you?

11 A. I probably still be working with  
12 one arm.

13 Q. Okay. I understand.

14 A. Yeah.

15 Q. But you would still be working  
16 as best you could?

17 A. Yeah, best I could.

18 Q. Were there any activities that  
19 you -- any sports or hobbies that you did  
20 before the surgery that you can't do  
21 anymore?

22 A. I ain't been able to play no  
23 sports in a while.

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1 Q. Okay. In how long?

2 A. Well, I'm 51. I ain't played  
3 none since I was about 30-something years  
4 old.

5 Q. Okay.

6 A. It's been 20-something years, I  
7 imagine.

8 Q. So, you're not going to come  
9 back later and say --

10 A. No.

11 Q. -- that you were on a church  
12 softball league or something like that  
13 before you hurt your shoulder?

14 A. No. My leg won't let me do  
15 that. My shoulder won't either.

16 Q. Well, but before your shoulder  
17 started hurting, you didn't do it?

18 A. No.

19 Q. Okay. Did you hunt or fish?

20 A. I ain't been fishing in three or  
21 four years. I don't even go hunting  
22 anymore.

23 Q. Did you hunt before you hurt

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1 your shoulder?

2 A. Oh, I use to hunt all the time.

3 Q. Deer hunt, bird hunt, what kind  
4 of hunting?

5 A. Squirrel hunting, something like  
6 that. I never did even deer hunt very  
7 much.

8 Q. Okay. So, just squirrel  
9 hunting?

10 A. See, I ain't really done any  
11 kind of fishing or hunting in years.

12 Q. Okay. Before your shoulder  
13 injury?

14 A. Yeah. I used to, yeah, a long  
15 time ago.

16 Q. All right. How long before your  
17 shoulder injury did you last go hunting  
18 on a regular basis?

19 A. I imagine it's been over ten  
20 years.

21 Q. How long before the shoulder  
22 injury did you last go fishing on a  
23 regular basis?

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1           A.     I ain't been fishing in about  
2 three or four years.

3           Q.     Before the shoulder?

4           A.     Before the shoulder.

5           Q.     Okay. Were you a member of any  
6 church here locally?

7           A.     I'm a member of Midway Full  
8 Gospel Church.

9           Q.     Okay. And did you do any kind  
10 of church mission trips or anything  
11 before the surgery?

12          A.     No, sir.

13          Q.     Okay. Are you a member of any  
14 kind of civic clubs like Civitans or  
15 Jaycees?

16          A.     No, sir.

17          Q.     And you think -- or do you agree  
18 that it took a while to get the surgery  
19 done, longer than you wanted it to --

20          A.     Yes.

21          Q.     -- because of miscommunications  
22 between CMI and the doctors?

23          A.     Yes.

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1 MR. TINNEY: And I'm going to  
2 object to the, you know, the form of that  
3 question because we -- you classify it as  
4 miscommunications. We don't know, you  
5 know, what it is.

6 Q. (By Mr. Brown) Well, and I'll  
7 define miscommunications as from your  
8 conversations with the doctor's office  
9 and from your conversations with  
10 Ms. Heppes, that both of those people,  
11 the doctor and CMI told you they were  
12 talking back and forth; right?

13 A. Yeah. The doctor wanted to do  
14 it, and they didn't want to let him do  
15 it.

16 Q. And they were saying, "We sent  
17 the records," and they were saying, "No,  
18 we don't have the records"?

19 A. That's true.

20 Q. Okay.

21 A. That's true.

22 Q. And it was that communication or  
23 lack of communication between those two